contribution, since the person sued for contribution has already had an opportunity to litigate the question. See *Lawrence* v. *Stearns*, 79 Fed. 878; *Love* v. *Gibson*, 2 Fla. 598. The same reasoning requires that the defendants be allowed to take advantage of the former finding that the relation of co-surety did not exist. *Cross* v. *Scarboro*, 6 Boxt. (Tenn.) 134; *Ledoux* v. *Durrive*, 10 La. Ann. 7. *Contra*, *Koelsch* v. *Mixer*, 52 Oh. St. 207, 39 N. E. 417.

RESTRAINT OF TRADE — COMBINATION OF OWNERS OF SEPARATE COPYRIGHTS TO FIX RESALE PRICE — EFFECT OF COPYRIGHT STATUTE. — The publishers of many copyrighted books combined to boycott all jobbers and booksellers who should not maintain the net prices of copyrighted books fixed by the individual members of the combination. *Held*, that there is an illegal restraint of trade. *Straus* v. *American Publishers' Association*, 34 Sup. Ct. 84.

This decision limits in another way the powers granted by the copyright and patent statutes to control copyrighted and patented articles after they have been sold. The holder of a copyright cannot limit the resale price by notice to the purchaser. *Bobbs-Merrill* v. *Straus*, 210 U. S. 339, 28 Sup. Ct. 722. The rights of a patentee are similarly restricted. *Bauer & Cie* v. *O'Donnell*, 229 U. S. 1, 33 Sup. Ct. 616. See 27 HARV. L. REV. 73. The public policy against restraints on the alienation of chattels is in such cases apparent. See 26 HARV. L. REV. 640. By a decision which seems out of harmony with the spirit of these decisions, the Supreme Court has held, however, that a patentee may by notice require that a patented article should be used only with certain unpatented goods. *Henry* v. *A. B. Dick Co.*, 224 U. S. 1, 32 Sup. Ct. 364. On the other hand, contracts between the owner of a copyright or patent and with retailers, not to resell the copyrighted or patented articles below a certain price, have been held good in the lower courts. See 26 HARV. L. REV. 640; 19 HARV. L. REV. 125. Single contracts are obviously not objectionable but the legality seems doubtful when there is a system of agreements to limit the resale price. That such agreements by patentees are not protected by the patent statute has been suggested by the Supreme Court. *Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20, 33 Sup. Ct. 9. See 25 HARV. L. REV. 454. It is broadly stated in the principal case that the patent and copyright statutes are not intended to authorize agreements in restraint of trade. Probably the same reasoning would be applied to hold improper a system of agreements to control the resale price in the case of patented or copyrighted articles as in the case of goods made under a secret process. See *Dr. Miles Medical Co.* v. *Park & Sons*, 220 U. S. 373, 31 Sup. Ct. 376. See 24 HARV. L. REV. 244, 680. In holding that combinations by owners of several *separate* copyrights to control the retail prices of the copyrighted article are not protected by the copyright statute, the principal case seems clearly right. For a further discussion of the principles involved, see 19 HARV. L. REV. 125.

RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO THE USE OF PROPERTY — WHERE THE RELATION OF "DOMINANCY" AND "SERVIENCY" IS LACKING. — The plaintiff conveyed a certain lot in fee, the grantee covenanting for himself, his heirs and assigns, not to erect any flat or tenement building thereon within a period of twenty years. The covenantor later assigned the land to the defendant with notice, but without restrictions. At no time did the plaintiff own any land in the neighborhood aside from that conveyed. The defendant having started to construct an apartment house, the plaintiff seeks an injunction. *Held*, that the injunction be granted. *Van Sand* v. *Rose*, 103 N. E. 194 (Ill.).

The court proceeds on the ground of enforcing an equitable servitude created by virtue of the restrictive covenant. There is no doubt that when adjoining lands are intended to be benefited, a restrictive covenant is enforceable against an assignee with notice. *Tulk* v. *Moxhay*, 2 Phillips 774. But this

is strictly an equitable doctrine. See *London, etc. Ry. Co.* v. *Gomm*, 20 Ch. D. 562, 583. And it is a fundamental equitable principle that equity will not enforce a burden where there is no benefit derived. For example, equity refuses to specifically enforce a contract where no substantial benefit would result. *Miles* v. *Dover, etc. Iron Co.*, 125 N. Y. 294, 26 N. E. 261. So if the covenants in the principal case are considered as running with the land in equity, there being no benefit, they should not be enforced. But it seems that the effect of such restrictive covenants is rather to create an equitable property right, for when the right is once recognized damages are immaterial. *Peck* v. *Conway*, 119 Mass. 546. Yet if so considered, the same result follows, for it would clearly be unjust and contrary to sound policy to create a property right to satisfy a mere whim of a stranger. Where originally the adjoining lands were benefited, but due to a change in the neighborhood the benefit ceases, equity refuses to enforce the burden. *Jackson* v. *Stevenson*, 156 Mass. 496. *A fortiori*, where no adjoining land ever existed, equity should not recognize a property right at all. Nor is this analogous to an easement in gross at law, where these are permitted, for there a right of beneficial user is created in the quasi-dominant owner, while here no benefit whatever can be derived. It is submitted that there must be some physical or financial benefit to the neighboring lands or the covenantee's business, *i. e.*, some relation of "dominancy" and "serviency," or the covenant is only personal and collateral. See *Formby* v. *Barker*, [1903] 2 Ch. D. 539, 552. The authorities also are conclusive against the holding of the principal case. *Dana* v. *Wentworth*, 111 Mass. 291; *Formby* v. *Barker*, *supra*; *Rector* v. *Rector*, 135 N. Y. App. Div. 501, 114 N. Y. Supp. 623.

SALES — EXPRESS WARRANTIES — WHAT CONSTITUTES. — The plaintiff leased of the defendant a farm, together with all the implements upon it. Amongst the latter was a traction engine, in regard to which the defendant said before the lease was executed, "You have nothing to do but to flop the fly wheel and away she goes." The plaintiff sues for breach of warranty, basing his claim to an express warranty solely upon this statement. *Held*, that he may recover. *Tocher* v. *Thompson*, 26 West. L. Rep. 288 (Manitoba Ct. App.).

A recent decision in the House of Lords established for England the rule that an express warranty cannot arise without a distinct collateral agreement, including an offer to warrant by the vendor and acceptance by the vendee. *Heilbut* v. *Buckleton*, [1913] A. C. 30. For a criticism of this view, see article by Professor Williston in 27 HARV. L. REV. 1. The principal case, coming as it does from a Canadian jurisdiction, is interesting because while announcing the test of *Heilbut* v. *Buckleton*, it in fact grants recovery on what the American authority would treat as merely an affirmation of fact that induces the sale. See 21 HARV. L. REV. 555 ff. The court decided the case as though it were purely one of sale, although the actual transaction was a long-term bailment of the traction engine. It is submitted, however, that this should make no difference, and that whatever constitutes an express warranty in the law of sales should apply equally to the law of leases of chattels. It has long been clear that the bailor of a chattel for a specific purpose is subject to the rules of implied warranty. *Jones* v. *Page*, 15 L. T. Rep. N. S. 619.

SALES — STOPPAGE IN TRANSITU — EFFECT OF ATTORNMENT BY BAILEE. — Upon the insolvency of the vendee, a number of claims for stoppage *in transitu* were entered for goods held by the U. bleachery, an independent concern. On one lot, the goods before the sale had been bleached and held for the vendor and no notice of the sale had reached U. On another lot the goods were held as in the first case, but the vendee had given a delivery order to U., received delivery of part, and U. held the remainder subject to the vendee's order. On